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C O N F I D E N T I A L BOGOTA 009122

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TAGS: [KJUS](#) [PGOV](#) [PINR](#) [PREL](#) [PTER](#) [CO](#)  
SUBJECT: FINAL JUSTICE AND PEACE LAW DECREE TRACKS WITH  
CONSTITUTIONAL COURT'S DECISION

Classified By: Ambassador William B. Wood.  
Reasons: 1.4 (b) and (d)

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SUMMARY  
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¶1. (C) The final Justice and Peace Law (JPL) implementing decree, published on September 29, closely tracks the Constitutional Court decision issued on May 13. Public comments have generally been positive. The decree incorporates many of the concerns raised by the Ambassador with senior GOC officials, including a provision requiring demobilized paramilitaries to provide a full and truthful account of their criminal activities. Some demobilized paramilitary leaders who have not yet turned themselves in to the GOC announced on October 1 they would not surrender until the GOC guarantees that they will not be extradited. End summary.

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POSITIVE CHANGES TO FINAL JPL IMPLEMENTING DECREE  
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¶2. (C) The final Justice and Peace Law (JPL) implementing decree, published on September 29, is consistent with the Constitutional Court's JPL decision issued on May 13. The decree is much simpler than previous drafts (it has 22 articles, versus 44 articles in the latest draft) and, rather than attempting to reverse elements of Constitutional Court's ruling, closely tracks the Court's decision as well as Decree No. 4760 issued by the Colombian government on December 30, ¶2005.

¶3. (C) The decree does not contain several provisions sought by the paramilitaries. It does not classify "sedition" as a political crime nor does it allow paramilitaries to credit up to 18 months of the time they spent at San Jose de Ralito or other concentration zones toward their JPL alternative sentences. Media and opposition comment on the final JPL decree has been positive, with opposition Polo Democratico Senator Gustavo Preto saying he was satisfied with the final decree since it respected the Constitutional Court ruling.

¶4. (C) Most concerns the Ambassador raised with senior GOC officials on the JPL draft decree late in August were integrated into the final decree. The decree does not create any legal obstacles to extradition, promotes adequate reparations, encourages complete disclosure in the version libre, and no longer includes a provision creating a rebuttable presumption that any crime committed by a member of the AUC was done in furtherance of the group's objectives. The following are some of the points made in the decree:

#### Extradition

- The decree does not address extradition nor does it create any legal obstacles to extradition. The GOC did not include any reference to "sedition" as a political crime, which would have given the paras an additional argument to use against extradition. Earlier drafts had included this provision, despite the Constitutional Court's ruling against it.

#### Adequate Reparations

- Article 9 of the decree requires those subject to the law to identify and forfeit all their illicit assets. If the illegal assets were held under a different name, the decree allows for "principle of opportunity" (prosecutorial discretion) to be applied (Article 14). This gives front men and family members an incentive to turn over assets, rather than conceal them. The possibility of discretion would exist only for those who acted as fronts and not for paramilitaries themselves or for persons who had committed violent acts. When illegal assets are insufficient to pay reparations, the decree provides that legal assets must be utilized. Further, the decree allows legal restrictions to be imposed on legal

assets, just as the Constitutional Court had mandated in its decision. If the person's illicit and licit assets are insufficient to meet his JPL obligations, the illegal and legal assets of the members of the paramilitary bloc can be used (Article 18). The decree also allows victims to denounce any assets not surrendered (Article 14).

#### Full and Complete Disclosure

- The decree obligates paras to confess not only those crimes in which they directly participated, but also to testify regarding any crimes committed by the illegal armed group (Article 9). The final decree goes farther than earlier drafts and states that if a crime is left out of the version libre and it is of a "relevant" nature it could result in the loss of JPL benefits.

#### Strict Penalties for Commission of New Crimes

- The decree makes clear that the commission of any new crime, as long as it was committed intentionally, while serving the alternative sentence, would automatically result in the loss of benefits.

#### No Rebuttable Presumption

- The final decree does not include a provision in earlier drafts which had created a rebuttable presumption that all crimes committed by demobilized persons, including drug trafficking and illegal personal enrichment, were committed as part of their membership in the group.

#### LESS POSITIVE ON PRISON CONDITIONS

¶5. (C) The final decree is unclear on whether demobilized individuals will have to serve time in regular prisons. It says the GOC will determine the final location where the demobilized will serve their sentences (Article 13). This location must comply with Article 28 of Law 65 of 1993, which allows the sentence to be served in an institution other than a regular penitentiary, such as an agricultural colony.

¶6. (C) The final decree is silent on whether the GOC will allow paramilitaries to apply up to 18 months of the time they spent in Santa Fe de Ralito toward their alternative sentences, but it does credit time spent at La Ceja (Article 11). The decree's silence could mean that it will be up to the JPL Courts to determine, in light of the Constitutional Court's decision, whether to grant this 18 month credit or not. The JPL allowed paramilitaries to count their time spent at Ralito, but the Constitutional Court revoked this provision. Still, the Court added that its decision was not retroactive, leaving room for paramilitaries to argue that it should still apply to those who demobilized before the Court ruling.

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PARA LEADERS AT-LARGE REQUEST EXTRADITION DECREE  
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¶7. (C) Twelve demobilized paramilitary leaders that have not turned themselves, led by Vicente Castano and AKA "Los Mellizos," announced on October 1 they would not surrender until the GOC guaranteed they will not be extradited. Castano has publicly asked for a series of judicial guarantees, but the GOC has not responded. Twenty-nine paramilitary leaders have turned themselves in--25 in la Ceja and four in other secure locations.  
WOOD